STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SPRINTCOM, INC., WIRELESSCO, L.P., NPCR, INC. D/B/A NEXTEL PARTNERS, AND NEXTEL WEST CORP.	)	
Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With	)	Docket No. 12-0550
Illinois Bell Telephone Company d/b/a AT&T Illinois	)	

SPRINT'S RESPONSE TO AT&T'S APPLICATION FOR REHEARING

SprintCom, Inc. and WirelessCo, L.P., through their agent, Sprint Spectrum L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp. (collectively, "Sprint"), respectfully oppose AT&T's Application for Rehearing of the Commission's ruling on Issue 43. The Commission ruled that AT&T must promptly initiate a cost docket and demonstrate a TELRIC transit rate. As Sprint explained in its Application for Rehearing, the Commission's real error on Issue 43 was allowing AT&T to charge a non-TELRIC rate for any period of time or not allowing Sprint to receive a "true-up" for the time period between the effective date of the ICA and the conclusion of the cost docket. *See* Sprint's Application § V. If the Commission does not grant the relief requested in Sprint's Application, it certainly should not compound the problem by eliminating the requirement that AT&T prove a current TELRIC rate, or by deferring AT&T's initial filing until the end of a long, drawn-out appeal process as delay will allow AT&T to continue collecting inflated transit rates from Sprint.

A. The Commission's Decision to Require AT&T to Provide Transit Service at a TELRIC Rate is Appropriate and Consistent with Law

AT&T erroneously argues that "neither federal law nor state law requires AT&T Illinois to provide transit service to Sprint, or to provide transit service at cost-based (TELRIC) rates." AT&T's Application pp. 1-2. To the contrary, every federal court to review the issue has agreed that transit service must be provided, and must be provided at cost-based rates. Most recently, the Second Circuit held:

> Thus, we conclude that the provision of transit service falls under AT & T's obligation as an ILEC and that the service must be delivered at regulated rates.

S. New England Tel. Co. v. Comcast Phone of Connecticut, Inc., No. 11-2332, 2013 WL 1810837, at *2 (2d Cir. May 1, 2013) ("*SNET v. Comcast*"). This decision affirmed the Connecticut federal district's decision that came to the same conclusion:

> Reviewing the applicable FCC regulations and decisions as well as the relevant case law, the Court must conclude that interconnection under section 251(c) includes the duties to provide indirect interconnection and to provide transit service.

The S. New England Tel. Co. v. Perlermino, 2011 WL 1750224, at *4 (D. Conn. May 6, 2011).

And previously, a federal court in Nebraska held:

> [T]he unambiguous language of Section 251 demonstrates that an ILEC must provide transit under Section 251(c)(2).

Qwest Corp. v. Cox Nebraska Telecom, LLC, 2008 WL 5273687, at * 2 (D. Neb. Dec. 17, 2008).

AT&T fails to address any of these decisions, all of which run counter to AT&T's argument that the Commission's decision to order a TELRIC cost study is incompatible with federal law.

The Commission's decision is also supported by state law and Commission precedent. As the Staff argued persuasively, while the Commission has never explicitly found that transit service is required by Section 251(c)(2), it did order Ameritech to provide transiting back in 1996. *See* Staff's Post Hearing Br. at 40-41. The Commission has always reserved the right to set terms for transit and has recognized that policy considerations can support additional pro-competitive requirements that are consistent with the Act:

> [W]e clearly reserve[] the issue of whether public policy concerns might cause the Commission to impose transiting as an obligation on an incumbent local exchange carrier if the parties present it as an unresolved issue in an arbitration.
>
> …
>
> The FCC specifically stated that it was establishing minimum requirements and that states may impose additional pro-competitive requirements that are consistent with the 1996 Act and FCC Rules….
>
> The vital public interest in efficient carrier interconnection at reasonable rates necessitates that we impose this interconnection obligation on Ameritech Illinois, and we find that our doing so is fully consistent with the terms and policies of the 1996 Act and FCC Order, as well as Illinois law. At a minimum, transiting will facilitate the indirect interconnection contemplated by Section 251(a)(1) of the 1996 Act.

MCI Telecomms. Corp. Petition for Arbitration Pursuant to Section 252(b) of the Telecomms.

Act of 1996 to Establish an Interconnection Agreement with Ill. Bell Tel. Co. d/b/a Ameritech Ill., Docket No. 96-AB-006, 1996 WL 33660256, Arbitration Decision (I.C.C. Dec. 17, 1996) (discussed in Staff's Post-Hearing Brief pp. 40-41).

Historically, the Commission has achieved these policy goals by requiring AT&T to charge TELRIC rates incorporated in AT&T's tariff. Other parties that have challenged this rate in the past have failed to convince the Commission that the facts had changed enough to warrant the establishment of a new rate. *See, e.g., Ill. Bell Tel. Co. Petition for Arbitration with Big River Tel. Co.*, Docket No. 11-0083 at 24, 38 (I.C.C. June 14, 2011) (rejecting evidence relied on by Big River). What is different now is not the law or the Commission's interest in securing cost-based transit service for competitors, but the fact that Sprint demonstrated, to the satisfaction of Staff and the Commission, that it is time to update rates. In light of this finding, the Commission's decision to order a new docket falls directly in line with Commission precedent and is well supported by state and federal policy considerations.

B. AT&T Does Not Challenge the Commission's Finding that AT&T Failed to Prove That its Current Rate Complies with TELRIC

AT&T has not asked the Commission to reconsider its findings of fact on Issue 43. AT&T's Application challenges the legal basis for the ruling, but does not challenge the Commission's decision that, based on the evidence, there are questions about whether AT&T's rate remains valid. Arbitration Decision pp. 45-46. This is significant. AT&T argued strenuously at the hearing that its rate remained TELRIC compliant. On exceptions, AT&T argued "there is no evidence calling into question the validity of AT&T's current rate." Arbitration Decision at 46 (reciting AT&T's argument). The Commission disagreed. *Id.* AT&T has now abandoned that argument. The fact that AT&T no longer challenges that finding should

give the Commission greater confidence that requiring AT&T to file a new cost docket will lead to lower, more reasonable costs for competitors.

C. There is No Basis to Defer the Initiation of a Cost Docket

If the Commission holds to its decision that AT&T must initiate a new cost docket, it should deny AT&T's request to delay its filing until after appeals are exhausted. AT&T has every incentive to delay – its tariff is more than twice as high as the rate it provides to its affiliate. It knows that an appeal may very well span a large portion of the ICA's term. Because AT&T has not challenged the Commission's finding of fact that the evidence validates the need for a new rate, the Commission can conclude that AT&T simply wants to overcharge for as long as possible. Such delay will be bad for competitors and consumers, and is contrary to the policy the Commission invoked to order a docket in the first place.

AT&T's only rationale for delay is that, if it wins on a hypothetical appeal, the work done in the cost study docket will have been for naught. AT&T's Application p. 5. Essentially, AT&T is asking the Commission to enter a temporary injunction – which is not allowed by the Commission's procedural rules, and which can be issued only by a reviewing court. Once an appeal is filed, AT&T, like every similarly situated litigant, can attempt to obtain temporary injunctive relief. To succeed, AT&T will have to 1) convince the court that it is likely to succeed on the merits, 2) prove that it will be irreparably harmed if an injunction is not entered, 3) be at greater risk of harm than Sprint, and 4) hold a position that is supported by the public interest. *See Roper Corp. v. Litton Sys., Inc.*, 589 F. Supp. 823, 824-25 (N.D. Ill. 1984).[1] The same standards are built into the state law. *See* 220 ILCS 5/10-204.

[1] Appeal of Commission decisions resolving issues in interconnection decisions are filed in federal district court. 47 U.S.C. § 252(e)(6); 83 Il. Adm. Code Part 762.50 ("No State court shall have jurisdiction to review the action of the Commission in approving or rejecting an agreement under Section 252 of the Communications Act of 1934").

The Commission should not short-circuit a reviewing court's job. AT&T has available to it a procedural mechanism by which it can attempt to suspend implementation of a Commission order, and it must follow that path to obtain the relief it seeks. In addition, AT&T cannot clear the high substantive hurdles required to obtain temporary relief. If the Commission maintains its order that AT&T initiate a cost docket, Sprint necessarily holds the better position on the merits. AT&T does not attempt to demonstrate or quantify the nature of any irreparable harm, nor does it address the equitable considerations, which fall in favor of lower rates for competitors. AT&T Application p. 5.

For these reasons, the Commission should reject AT&T's request to delay the initiation of the cost docket per the Arbitration Order.

II. CONCLUSION

Sprint respectfully requests that the Commission deny AT&T's Application for Rehearing.

Respectfully submitted,

By _____

Kenneth A. Schifman
Director, Government Affairs
6450 Sprint Parkway
Mailstop: KSOPHN0314-3A753
Overland Park, Kansas 66251
(913) 315-9783
(913) 523-9827 (fax)
Email: Kenneth.schifman@sprint.com

Roderick S. Coy (MI-P12290)
Haran C. Rashes (MI-P54883)
CLARK HILL PLC
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
(517) 318-3099 (fax)
Email: rcoy@clarkhill.com
hrashes@clarkhill.com

Jeffrey M. Pfaff
Senior Counsel
6450 Sprint Parkway
Mailstop: KSOPHN0312-3A321
Overland Park, Kansas 66251
(913) 315-9294
(913) 315-0785 (fax)
Email: jeff.m.pfaff@sprint.com

Richard H. Chapman
CLARK HILL PLC
150 N. Michigan Avenue, Suite 2700
Chicago, Illinois 60601
(312) 985-5904
(312) 985-5968 fax
Email: rchapman@clarkhill.com

Attorneys for:
SprintCom, Inc., WirelessCo, L.P. through their agent Sprint Spectrum L.P., NPCR, Inc. d/b/a Nextel Partners, and Nextel West Corp.

Date: August 2, 2013

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

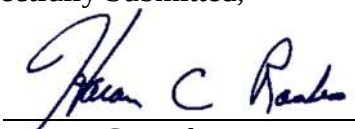
SPRINTCOM, INC., WIRELESSCO, L.P., NPCR, INC. D/B/A NEXTEL PARTNERS, AND NEXTEL WEST CORP. Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With Illinois Bell Telephone Company d/b/a Ameritech Illinois	)	Docket No. 12-0550

NOTICE OF FILING

To: Parties of Record

You are hereby notified that this 2nd day of August, 2013, I filed, via the electronic e-docket system, with the Chief Clerk of the Illinois Commerce Commission, on behalf of SprintCom, Inc., WirelessCo, L.P., NPCR, Inc., d/b/a Nextel Partners, and Nextel West Corp., Sprint's Response to AT&T's Application for Rehearing in the above-captioned docket.

Respectfully Submitted,

By: 

Haran C. Rashes
CLARK HILL PLC
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
(517) 318-3099 Fax

Dated: August 2, 2013

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SPRINTCOM, INC., WIRELESSCO, L.P., NPCR, INC. D/B/A NEXTEL PARTNERS, AND NEXTEL WEST CORP.	)	
Petition for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With	)	Docket No. 12-0550
Illinois Bell Telephone Company d/b/a AT&T Illinois	)	

CERTIFICATE OF SERVICE

I hereby certify that copies Sprint's Response to AT&T's Application for Rehearing, in the above-captioned docket, were served upon the parties on the attached service list via Unites States First Class Mail (unless otherwise indicated) and Electronic Mail, on August 2, 2013.

Respectfully Submitted,

By: _____

Haran C. Rashes
CLARK HILL PLC
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
(517) 318-3099 Fax

Dated: August 2, 2013

ICC DOCKET NO. 12-0550
SERVICE LIST

Administrative Law Judges
Hon. Leslie D. Haynes
Hon. Heather Jorgenson
Administrative Law Judges
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104
E-Mail: lhaynes@icc.illinois.gov
hjorgens@icc.illinois.gov

Illinois Commerce Commission
Matthew L. Harvey
Christine Ericson
Michael Lannon
Nora Naughton
Kimberly Swan
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104
E-Mail: mharvey@icc.illinois.gov
cericson@icc.illinois.gov
mlannon@icc.illinois.gov
nnaughto@icc.illinois.gov
kswan@icc.illinois.gov

AT&T Illinois

Karl B. Anderson
Mark Ortleib
Attorneys
AT&T Midwest
225 W. Randolph, Fl. 25D
Chicago, IL 60606
E-Mail: ka1873@att.com
mo2753@att.com

Dennis G. Friedman
Mayer Brown
71 S. Wacker Drive
Chicago, IL 60606
E-Mail: dfriedman@mayerbrown.com

Sprint
Kenneth A. Schifman
Director, Government Affairs
6450 Sprint Parkway
Mailstop: KSOPHN0314-3A753
Overland Park, KS 66251
E-Mail: kenneth.schifman@sprint.com

Jeffrey M. Pfaff
Senior Counsel
6450 Sprint Parkway
Mailstop: KSOPHN0312-3A321
Overland Park, KS 66251
E-Mail: jeff.m.pfaff@sprint.com

Joseph M. Chiarelli
Senior Counsel
Sprint Nextel - Legal Department
6450 Sprint Parkway
KSOPHN0314-3A621
Overland Park, KS 66251
E-Mail: joe.m.chiarelli@sprint.com

Roderick S. Coy
Haran C. Rashes
Clark Hill PLC
212 East Grand River Avenue
Lansing, Michigan 48906
E-Mail: rcoy@clarkhill.com
hrashes@clarkhill.com

Richard H. Chapman
Clark Hill PLC
150 N. Michigan Ave, Suite 2700
Chicago, IL 60601
E-Mail: rchapman@clarkhill.com